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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 PAVLE ZIVKOVIC, et al.

4 Plaintiffs

5 v.

17 Civ. 553 (GHW)

6 LAURA CHRISTY LLC, d/b/a  
7 Valbella, LAURA CHRISTY  
8 MIDTOWN, LLC, DAVID  
GHATANFARD, et al.

9 Defendants

-----x

10 New York, N.Y.  
11 October 20, 2023  
2:00 p.m.

12 Before:

13 HON. GREGORY H. WOODS

14 District Judge

15 APPEARANCES

16 JOSEPH & KIRSCHENBAUM LLP  
Attorneys for Plaintiffs  
17 LUCAS C. BUZZARD  
18 D. MAIMON KIRSCHENBAUM

19 HAROLD SALANT STRASSBERG & SPIELBERG  
Attorney for Defendant Laura Christy Midtown LLC  
20 LEONARD I. SPIELBERG

21 DEALY SILBERSTEIN & BRAVERMAN LLP  
Attorney for Defendant LAURA CHRISTY LLC  
22 MARIA L. BIANCO

23 NEAL S. COMER, ATTORNEY AT LAW  
Attorney for Defendant Ghatanfard & Luca  
24 NEAL S. COMER

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1 (The Court and all parties appearing via remote  
2 telephone conference)

3 THE COURT: This is Judge Woods. Do I have a court  
4 reporter on the line?

5 (Replies)

6 THE COURT: What I'd like to do is start by taking  
7 appearances from the parties. I'm going to ask the principal  
8 spokesperson for each side to identify the members of their  
9 side rather than having each lawyer introduce themselves  
10 individually.

11 I would like to start first with counsel for  
12 plaintiff, and then I am going to ask counsel for each of the  
13 defendants to identify themselves by name just in order of the  
14 appearance of each defendant's name on the docket.

15 So let me start with counsel for plaintiff. Who is on  
16 the line for plaintiff?

17 MR. BUZZARD: Good afternoon, your Honor. This is  
18 Lucas Buzzard from Joseph & Kirschenbaum for plaintiff. I  
19 believe Maimon Kirschenbaum is on as well.

20 THE COURT: Thank you.

21 Let me hear who is on the line for each of the  
22 defendants. Counsel, I will ask you to introduce yourselves in  
23 order of the appearance of your client on the docket.

24 Go ahead.

25 MS. BIANCO: Good afternoon. Maria Louisa Bianco for

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1 Laura Christy LLC.

2 THE COURT: Thank you.

3 MR. SPIELBERG: Leonard Spielberg, your Honor. Laura  
4 Christy Midtown LLC, and movant.

5 THE COURT: Thank you.

6 MR. COMER: Good afternoon, your Honor. Neal Comer  
7 for defendants Ghatanfard and Luca.

8 THE COURT: Thank you very much. Thank you all for  
9 being here.

10 Let me just begin with a few brief introductory  
11 remarks about the rules that I would like the parties to follow  
12 during today's conference.

13 At the outset, let me just remind the parties that  
14 this is a public proceeding. As a result, any member of the  
15 public or the press is welcome to dial in to today's conference  
16 and to audit it. I am not now monitoring whether third parties  
17 are auditing the conference. But because they are welcome to  
18 do so, I just wanted to remind you of that fact.

19 Second, please keep your lines on mute at all times  
20 except when you are intentionally speaking to me or to the  
21 representative of a party. I ask you please do that even if  
22 you don't think there is background noise wherever you may be.  
23 Sometimes people are wrong about that, and we will hear the  
24 sound of people moving papers or the like in the background.  
25 If you can, please place your phones on mute so we can avoid

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1 that kind of disruption.

2 Third, please state your name each time that you speak  
3 during the conference. You should do that each time you speak,  
4 regardless of whether or not you have spoken previously to  
5 serve the court reporter in keeping a clear transcript of the  
6 proceedings today.

7 Fourth, please abide by instructions by our court  
8 reporter that are designed to help her do her job.

9 And, finally, I am ordering there be no recording or  
10 rebroadcast of all or any portion of today's proceeding.

11 Counsel, I scheduled this in response to the  
12 application for an emergency stay of the enforcement  
13 proceedings with respect to the judgment in the case.

14 I have reviewed the parties' submissions in connection  
15 with that application. I am happy to hear from either side if  
16 there is anything you would like to add to your written  
17 submissions. However, again, I have reviewed the materials  
18 that have been submitted on the docket to date, and I am aware  
19 of them.

20 So let me hear first from counsel for the movant.  
21 Counsel, is there anything you would like to add to your  
22 written submissions to the Court as oral argument before I turn  
23 to counsel for plaintiff the same question.

24 Counsel for movant, anything from you?

25 MR. SPIELBERG: Thank you, your Honor. Leonard

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1 Spielberg, movant.

2 Judge, you should be brought up to date on defendant's  
3 application to the Second Circuit for an expedited appeal.  
4 That application has been granted in part. Notwithstanding  
5 plaintiff's opposition to it, the Circuit has granted a limited  
6 expedited appeal by not contracting plaintiff's time to file an  
7 opposition brief but beyond the filing of this, the Circuit has  
8 agreed to expedite the appeal.

9 We believe that this is a factor that your Honor  
10 should consider today. It results in an even shorter period of  
11 stay that we would be requesting since our stay request is only  
12 pending appeal. And we believe that to be significant, Judge.  
13 I can't -- I won't guess at the Circuit's calendar for this  
14 appeal, but I believe based upon general experience, the appeal  
15 should be heard early in 2024. And since it is an expedited  
16 appeal, we would expect the circuit to render a decision in an  
17 accelerated fashion.

18 We believe that further, and while this is addressed  
19 in our motion, Judge, I believe it bears repeating, two brief  
20 facts.

21 One is that the nuclear basis for this motion is that,  
22 unfortunately, our principal, our defendant, Mr. Ghatanfard,  
23 has been diagnosed with stage four metastatic cancer and has  
24 begun already a course of treatment involving hormone therapy  
25 and chemotherapy, which your Honor must know, and hopefully not

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1 some experience near your Honor but from general knowledge,  
2 that it's an extremely debilitating circumstance. It is  
3 extremely unlikely that Mr. Ghatanfard will be able to  
4 participate in the proceedings in this case in any significant  
5 and productive fashion whether or not your Honor grants this  
6 motion. And one wonders what will happen in the circumstance  
7 that you don't grant the stay and Mr. Ghatanfard is in a  
8 position, let's say, to defend the contempt motion pending  
9 against him brought by the plaintiffs to punish him as a result  
10 of his alleged refusal or inability to respond to their  
11 discovery measures. This in a way is the cloud that hangs over  
12 the motion is this not all a moot discussion anyway. And I  
13 urge your Honor to consider that in your consideration of this  
14 motion.

15 And further, your Honor, if there is one other fact  
16 that needs to be stressed, it's that plaintiff has more or less  
17 conceded that Mr. Ghatanfard has no significant assets that  
18 they can attach in an effort to collect the judgment that is  
19 still extant to the pending appeal. The only source of  
20 collection that plaintiffs may have that we are aware of is  
21 their alleged claims against Rosey Kalayjian for her being a  
22 transferee from Mr. Ghatanfard.

23 Plaintiffs already have a temporary restraining order  
24 against Mr. Kalayjian -- Ms. Kalayjian, rather -- which further  
25 tie the assets that they have enumerated. We know that a

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1 hearing is scheduled on the attachment of her assets a week  
2 hence. What then will they do beyond that between now and what  
3 will ultimately be the time that the appeal will be decided and  
4 there is, I submit to you, your Honor, a real question about  
5 whether this stay is going to actually slow the plaintiffs down  
6 or interfere with their collection efforts.

7 Thank you, Judge.

8 THE COURT: Good. Thank you very much, counsel.  
9 That's very helpful.

10 Let me turn to counsel for plaintiff. Counsel, again  
11 I have read the parties' submissions, but I will hear from you  
12 if there is anything that you would like to add or that you  
13 would like to say in response to the thoughts shared by  
14 Mr. Spielberg.

15 MR. BUZZARD: Thank you, your Honor. This is Luca  
16 Buzzard for plaintiff.

17 I think just a very brief couple points. I just want  
18 to reiterate that the defendants are bringing this motion under  
19 Rule 62(b) and the plain language much that rule requires a  
20 bond or other security for a stay to issue under it. There is  
21 simply no other way to read that rule other than requiring a  
22 bond or other security, and defendants have offered neither one  
23 of those. So under the plain language of Rule 62(b), there is  
24 no basis for a stay here. And that is supported by **Nassau**  
25 **County** which considered whether to waive the bond requirement

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1 in the event that an appellant provides an acceptable alternate  
2 means of securing the judgment, which, again, is not present  
3 here. So there is just no basis for a stay here under Rule  
4 62(b). There is no security. There is no bond. And I am  
5 happy to answer any other questions with respect to any of our  
6 papers. But that is simply the facts here.

7 The TRO referenced by Mr. Spielberg is not any form of  
8 security. In order to get anything from that TRO, plaintiff  
9 must exercise numerous steps. They must obtain -- prevail on  
10 fraudulent conveyance claims but, that is simply not equivalent  
11 of a bond of a security contemplated by Rule 62(b).

12 And, finally, just to stress, plaintiffs are, you  
13 know, well aware that Mr. Ghatanfard has health issues, and we  
14 sympathize with him, but there are 300 other class members who  
15 have been waiting for this judgment for -- now since 2017.  
16 They have an interests too as well, and those interests would  
17 not be furthered by a stay in this matter.

18 So I'm happy to answer any other questions, but I  
19 think we will just leave it to our papers for the rest of this.

20 THE COURT: Thank you.

21 Any response counsel for the movant?

22 MR. SPIELBERG: Thank you, your Honor.

23 I think that it is -- since Mr. Buzzard has brought up  
24 the situation of the members of the class, I would say again  
25 that there is, and has never been, any indication that any

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1 single class member lost any money by reason of the wrongs that  
2 were alleged in this lawsuit. Only that. And anything that  
3 they will ultimately receive as a result of this lawsuit and  
4 the collection of this judgment is just a pure windfall.

5 Thank you, Judge.

6 THE COURT: Thank you. Understood.

7 So let me do this: I am prepared to rule on the  
8 motion. I am going to ask the parties to place your phones on  
9 mute as I read you my decision and the reasons for it. I do  
10 want to say one thing that I will come back to at the end,  
11 which is that I am responding to the application under Rule 62.

12 I say that because I expect that although, as you are  
13 about to hear, I am going to deny the request to enter a stay  
14 of the enforcement actions generally, I expect that in the same  
15 way that I have worked on the scheduling of the contempt  
16 proceedings mindful of Mr. Comer's health condition, I expect  
17 that I will continue to take the parties' and their counsel's  
18 health conditions into account as I am determining what the  
19 appropriate schedule is and the structure is for the contempt  
20 proceedings against Mr. Ghatanfard.

21 Let me just say that while, as you are about to hear,  
22 I am going to deny the request to stay all enforcement  
23 proceedings in the case as a whole, which would include staying  
24 the action against Ms. Kalayjian, I just emphasize that I am  
25 willing to, and I will, work with the parties to structure or

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1 time the contempt proceeding as to Mr. Ghatanfard mindful of  
2 his health condition. So let me just put that aside because  
3 that is not exactly the question presented here, and I want to  
4 just signal my inclination to be considerate when it comes to  
5 that question in particular.

6 Let me respond first to the broader application that  
7 was brought to me here, which was to stay all enforcement  
8 proceedings pursuant to Rule 62(b), I will begin with an  
9 introduction.

10 I. INTRODUCTION

11 I scheduled this conference to discuss defendants'  
12 September 1, 2023 order to show cause as to why an emergency  
13 stay on all judgment enforcement proceedings should not be  
14 issued in this case. Dkt. No. 479.

15 The defendants in this action are Laura Christy LLC  
16 (doing business as "Valbella"), Laura Christy Midtown LLC,  
17 David Ghatanfard, and Genco Luca. See Dkt. No. 424 (partial  
18 judgment). The plaintiffs in this case are Mr. Pavle Zivkovic  
19 and a class of plaintiffs who are similarly situated. See Id.  
20 For the purposes of today's conference, when I refer to  
21 "plaintiff" in the singular, I am referring to Mr. Zivkovic.  
22 When I refer to "defendants," I am referring to the defendants  
23 I just listed except Mr. Luca, who has not joined in the motion  
24 currently before me.

25 Defendants filed their order to show cause on

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1 September 1, 2023, which the Court issued later that same day.  
2 See Dkt. Nos. 474, 479. Plaintiff opposed the show-cause order  
3 on September 22, 2023. Dkt. No. 498. Defendants filed a reply  
4 letter on October 2, 2023. Dkt. No. 506. I have reviewed the  
5 parties' briefing on this motion and other relevant portions of  
6 the record, and I have heard the parties' arguments here today.  
7 I will rule on defendants' motion for a stay of the judgment  
8 enforcement proceedings today. After a week-long trial,  
9 defendants were found to be liable to hundreds of individuals  
10 who, over a year since trial, have yet to receive a penny of  
11 their award. Because defendants fail to show that any attempt  
12 by plaintiff to enforce the judgment should be immediately and  
13 indefinitely stayed pending the resolution of the appeal, I am  
14 going to deny defendants' motion.

## 15 II. BACKGROUND

16 As the parties are familiar with the underlying facts  
17 and procedural history, I will not recite them here in full.  
18 The facts and procedural history that are particularly relevant  
19 to my decision are embedded in my analysis, but I would like to  
20 briefly highlight some of the procedural history of this case  
21 that is particularly relevant to this motion.

22 Following a jury verdict in favor of plaintiffs on  
23 April 11, 2022 and plaintiffs' subsequent motion for the entry  
24 of partial judgment under Federal Rule of Civil Procedure  
25 54(b), the Court entered partial judgment on July 4, 2023 as to

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1 plaintiffs' wage-and-hour claims under the New York Labor Law  
2 ("NYLL") on behalf of Mr. Zivkovic and a proposed class. Dkt.  
3 No. 283 (jury verdict); Dkt. No. 421 (order granting motion for  
4 partial judgment); Dkt. No. 424 (partial judgment). I will  
5 refer to these claims as the "Class Claims." The partial  
6 judgment as to the Class Claims was entered against Defendants  
7 Laura Christy LLC, Laura Christy Midtown LLC, and Mr.  
8 Ghatanfard, jointly and severally, in the amount of  
9 \$5,092,017.85. Dkt. No. 424, at 3.

10 I will briefly also note, as it is relevant to today's  
11 discussion, that plaintiffs have been pursuing enforcement  
12 proceedings to recover on the partial judgment. According to  
13 defendants, these efforts have included "restraining notices  
14 against [Mr. Ghatanfard] and others," discovery from third  
15 parties and related litigation, and moving for an attachment  
16 against non-party and Mr. Ghatanfard's partner, Rosey  
17 Kalayjian. Dkt. No. 475, at 1-2. I have already issued a  
18 temporary restraining order ("TRO") against Ms. Kalayjian to  
19 temporarily attach the assets she purportedly received from Mr.  
20 Ghatanfard. Dkt. No. 438. In doing so, I found that  
21 Plaintiffs had demonstrated both a likelihood of success on  
22 pursuing turnover proceedings for those assets and irreparable  
23 injury if the TRO was not granted. Id.

24 Not included in this partial judgment are Mr.  
25 Zivkovic's individual claims of discrimination against Mr.

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1 Ghatanfard and his claim for punitive damages against defendant  
2 Laura Christy Midtown, LLC. In my May 10, 2023 decision, I  
3 granted a new trial as to these claims, with the caveat that  
4 Mr. Zivkovic was provided the option to accept remittitur of a  
5 reduced punitive damages award. Dkt. No. 381. Mr. Zivkovic  
6 chose to proceed to a new trial on the punitive damages claim.  
7 Dkt. No. 396. Accordingly, these claims are ripe for a new  
8 trial, assuming that Mr. Zivkovic still wants to pursue them.  
9 I will discuss setting a trial on these claims later in this  
10 hearing.

### 11 III. ANALYSIS

12 Defendants seek, under Federal Rule of Civil Procedure  
13 62(b), a stay of all proceedings in this action to enforce the  
14 judgment in this matter pending the outcome of their appeal.  
15 Dkt. No. 475.

16 Federal Rule of Civil Procedure 62(b) provides the  
17 following: "At any time after judgment is entered, a party may  
18 obtain a stay by providing a bond or other security. The stay  
19 takes effect when the court approves the bond or other security  
20 and remains in effect for the time specified in the bond or  
21 other security." "The purpose of the rule is to ensure that  
22 the prevailing party will recover in full, if the decision  
23 should be affirmed, while protecting the other side against the  
24 risk that payment cannot be recouped if the decision should be  
25 reversed." *In re Nassau Cnty. Strip Search Cases*, 783 F.3d

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1 414, 417 (2d Cir. 2015) (per curiam) (internal quotation marks  
2 omitted) (quoting *Cleveland Hair Clinic, Inc. v. Puig*, 104 F.3d  
3 123, 125 (7th Cir. 1997)). Accordingly, a district court "may,  
4 in its discretion, waive the bond requirement if the appellant  
5 provides an acceptable alternative means of securing the  
6 judgment." *Id.* (internal quotation marks omitted) (quoting  
7 *FDIC v. Ann-High Assocs.*, 1997 WL 1877195, at \*1 (2d Cir. Dec.  
8 2, 1997) (per curiam)).

9 A. The Nassau County Factors Do Not Weigh in Favor of  
10 Waiving the Bond Requirement in Rule 62(b).

11 To determine whether the supersedeas bond requirement  
12 provided for in Rule 62(b) should be waived, I am directed to  
13 evaluate the following non-exclusive list of factors:  
14 (1) the complexity of the collection process; (2) the amount of  
15 time required to obtain a judgment after it is affirmed on  
16 appeal; (3) the degree of confidence that the district court  
17 has in the availability of funds to pay the judgment; (4)  
18 whether the defendant's ability to pay the judgment is so plain  
19 that the cost of a bond would be a waste of money; and (5)  
20 whether the defendant is in such a precarious financial  
21 situation that the requirement to post a bond would place other  
22 creditors of the defendant in an insecure position.

23 *Nassau Cnty.*, 783 F.3d at 417-18.

24 Defendants have not offered a bond or any other type  
25 of alternative security in support of their request. They

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1 argue that the Court should exercise its discretion to waive  
2 any obligation to post a bond or other security based on an  
3 application of the five-factor test adopted in *Nassau County*,  
4 and based on other equitable considerations. In support of  
5 their request, Defendants have presented evidence that Mr.  
6 Ghatanfard was recently diagnosed with stage-four metastatic  
7 cancer and is undergoing intensive cancer treatments, which are  
8 debilitating and negatively impact Mr. Ghatanfard's ability to  
9 fully participate in this litigation. Dkt. No. 475, at 2; Dkt.  
10 No. 476 (Spielberg Decl.); Dkt. No. 477 (Ghatanfard Decl.).  
11 Defendants also remind the Court that Mr. Neal Comer, Mr.  
12 Ghatanfard's "personal attorney" in this action, is suffering  
13 from a severe concussion that significantly restricts his  
14 ability to read, write, and otherwise represent Mr. Ghatanfard  
15 in this matter. Dkt. No. 476 (Spielberg Decl.). Finally,  
16 defendants note that they are pursuing an appeal of the Court's  
17 partial judgment as to the Class Claims and represent that they  
18 anticipate doing so on an expedited basis. Dkt. No. 475, at  
19 4-5; see also Dkt. No. 476 (Spielberg Decl.). During today's  
20 conference, I received an update regarding the status of the  
21 appeal.

22 Before I proceed further with my analysis, I just want  
23 to express my sympathy for Mr. Ghatanfard. I am sorry to hear  
24 about his diagnosis, and I wish him a speedy and successful  
25 recovery. I have previously expressed my sympathies to Mr.

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1 Comer for his serious injury, and I do so again today.

2 Unfortunately, I do have personal experience in my family with

3 both of those conditions, and so I am very sympathetic. I have

4 adjourned the briefing schedule and related hearing on

5 plaintiffs' motion to hold Mr. Ghatanfard in contempt to

6 accommodate Mr. Comer's injury. Dkt. Nos. 469, 482, 511, 513.

7 As an initial matter, plaintiffs raise as a threshold question

8 whether the Court can grant a stay given that defendants have

9 offered neither a bond nor any alternative security. Their

10 argument is based on the text of the rule, which, as I

11 described earlier, states that "a party may obtain a stay by

12 providing a bond or other security." The text of the rule does

13 not encompass the prospect of the grant of a stay where no

14 alternative security of any type has been offered. I think

15 that is a fair reading of the statute. And, as plaintiffs note

16 in their brief, some district courts have concluded that no

17 stay may be granted when no alternative security has been

18 offered. See *Blue Citi, LLC v. 5Barz Int'l Inc.*, 2019 WL

19 10890126, at \*3 (S.D.N.Y. Feb. 6, 2019) ("When a party fails

20 to offer an alternative form of security,' however, 'courts do

21 not hesitate to deny motions to stay execution pending

22 appeal.'" (quoting *Am. Hotel Int'l Grp., Inc. v. OneBeacon Ins.*

23 *Co.*, 2009 WL 1834505, at \*1 (S.D.N.Y. June 19, 2009));

24 *Hernandez v. Sub Enters. Inc.*, 2023 WL 23905432, at \*7 n.7

25 (E.D.N.Y. Mar. 7, 2023) ("Because Defendants did not raise the

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1 possibility of providing a bond or other means of securing the  
2 judgment, the Court need not consider whether to grant a stay  
3 under Rule 62(b)"). Plaintiffs are correct that no alternative  
4 security has been offered here. That the Court has temporarily  
5 restrained the assets of Mr. Ghatanfard's partner does not  
6 suffice. First, she is not a defendant. Moreover, the freeze  
7 of those assets is provisional, and the issue of whether the  
8 assets can be seized must be litigated. Defendants neither  
9 offer any response to the argument that they have failed to  
10 satisfy this threshold requirement for relief under Rule 62 in  
11 their reply brief; nor do they argue that the temporary  
12 constraint of Ms. Kalayjian's assets constitutes an offer of  
13 alternative security by them. I understand, as a result, that  
14 they concede this point.

15 Still, I note that the Seventh Circuit's opinion upon  
16 which the Second Circuit relied in Nassau County, *Dillon v.*  
17 *Chicago*, 866 F.2d 902 (7th Cir. 1988), concluded following  
18 application of their test that no alternative security needed  
19 to be provided. So there is at least some out-of-circuit  
20 support for the concept that a court applying the Nassau County  
21 test is permitted to stay a case without requiring a bond or  
22 any alternative security. I do not need to decide as a matter  
23 of law whether Rule 62 permits the entry of a stay where a  
24 party offers no bond and no alternative security under all  
25 circumstances. It is clear on the facts of this case that a

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1 stay without any bond or alternative security is not  
2 appropriate.

3 For I find that the Nassau County five factors do not  
4 support waiving the bond requirement of Rule 62(b) for  
5 defendants. In defendants' own words, "the only Nassau County  
6 factors that support the requested stay of enforcement are the  
7 first two . . ." Dkt. No. 475, at 3. Defendants concede that  
8 three out of the five Nassau County factors do not support  
9 waiving the bond requirement and granting a stay.

10 Although they are not contested here, I will touch  
11 briefly on these three non-contested factors, which are: the  
12 court's confidence in the availability of funds to pay the  
13 judgment; whether the defendant's ability to pay the judgment  
14 is so plain that the cost of a bond would be a waste; and  
15 whether the defendant is in such a precarious financial  
16 situation that a bond would place other creditors of the  
17 defendant in an insecure position.

18 But there is substantial reason for me to find that  
19 the third and fourth of the five Nassau factors do not weigh in  
20 favor of a stay. The Court has no confidence in the  
21 availability of funds to pay the judgment. I believe that  
22 there is a substantial concern about the ability of the  
23 defendants to satisfy a judgment. I note again that in order  
24 to grant a temporary restraining order against Ms. Kalayjian, I  
25 was required to find that there was a likelihood of success on

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1 the merits of plaintiffs' anticipated turnover proceedings.  
2 Dkt. No. 438, at 2 (TRO). I also understand that Mr.  
3 Ghatanfard has testified that he is essentially insolvent and  
4 does not have the funds to pay the judgment. Dkt. No. 420-11,  
5 at 6 (Ghatanfard Deposition Tr.). I understand that another of  
6 the defendant corporate entities has ceased operations.  
7 Therefore, the evidence before me has shown reason to be  
8 seriously concerned that, in plain terms, Mr. Ghatanfard may  
9 have taken steps to transfer substantial assets to another in  
10 order to avoid having to satisfy the judgment against him. I  
11 am therefore concerned that, if plaintiffs are not permitted to  
12 pursue their enforcement efforts, the assets that might be  
13 otherwise available to satisfy the judgment will be dissipated.  
14 The third factor weighs heavily against granting the requested  
15 stay without a bond. For the same reasons, defendants do not  
16 so clearly have sufficient wealth such that posting a bond  
17 would be a waste of money.

18 As for the fifth factor, I do not have any facts  
19 before me on defendants' creditors and their financial  
20 positions, and so that factor is neutral in my analysis.

21 Now going back to the first two factors, which are the  
22 complexity of the collection process and the amount of time  
23 required to obtain a judgment after it is affirmed on appeal,  
24 these factors do not weigh in favor of a stay. The collection  
25 process has been very complex. Plaintiffs have been pursuing

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1 enforcement of the judgment for an extended period. Their  
2 efforts have been substantial -- they have conducted discovery  
3 regarding Mr. Ghatanfard's assets, they have sought the  
4 attachment of his assets, and now assets that they assert to  
5 have been transferred to Mr. Ghatanfard's partner. They have  
6 filed a separate action against a new restaurant that they  
7 assert to be a successor-in-interest to one of the judgment  
8 debtors. So the efforts to enforce the judgment have been and  
9 will continue to be, I fear, complex. Defendants argue that  
10 the collection process will neither be significantly delayed  
11 nor further complicated by granting the requested stay. Dkt.  
12 No. 475 at 3. But this is belied by plaintiffs' extensive  
13 efforts to collect on the judgment to date. Also, while  
14 defendants assert that a stay will maintain the status quo, the  
15 stay requested would only restrain plaintiff's ability to  
16 pursue enforcement of the judgment -- would not stop Defendants  
17 from doing anything to spend, or, as plaintiffs assert, secret  
18 their assets. As a result, a stay will not maintain the status  
19 quo, but may permit the dissipation of assets that could be  
20 used to satisfy the judgment. The enforcement process would be  
21 lengthy. Unfortunately, Mr. Ghatanfard's and Mr. Comer's  
22 serious health concerns, which I do not take lightly, will only  
23 further complicate and lengthen the collection process.  
24 Therefore, my evaluation of the non-exclusive factors  
25 identified in Nassau County do not lead me to conclude that the

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1 bond requirement of Rule 62(b) should be waived.

2 B. Other Factors Also Do Not Weigh in Favor of  
3 Waiving the Bond Requirement.

4 The Nassau County five factors are non-exclusive  
5 factors, and the Court has the discretion to consider other  
6 factors. See 783 F.3d at 417 (adopting the five-factor  
7 analysis as "non-exclusive factors"). Defendants particularly  
8 emphasize this and point to certain equitable considerations  
9 that they ask me to consider, including the health of Mr.  
10 Ghatanfard and Mr. Comer, as mentioned, as well as the  
11 likelihood of success on their appeal of the partial judgment  
12 and irreparable harm. See Dkt. No. 475, at 3; Dkt. No. 506, at  
13 1.

14 Because a Rule 62(b) stay is a stay of a monetary  
15 award, the traditional equitable factors for stays of  
16 injunctive relief, including the likelihood of success on  
17 appeal or irreparable harm, are not applicable here. See,  
18 e.g., *John Wiley & Sons, Inc. v. Book Dog Books, LLC*, 327 F.  
19 Supp. 3d 606, 649 (S.D.N.Y. 2018) ("This Court agrees . . . the  
20 traditional four factors 'apply only when the judgment sought  
21 to be stayed is for injunctive or equitable relief.'"  
22 (alteration in original) (quoting *Moore v. Navillus Tile, Inc.*,  
23 2017 WL 4326537, at \*4 (S.D.N.Y. Sept. 28, 2017))). Indeed, the  
24 Second Circuit in Nassau County explicitly stated that its  
25 five-factor analysis stands "in contrast to the traditional

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1 stay factors." 783 F.3d at 418; see also *Moore v. Navillus*  
2 *Tile, Inc.*, 2017 WL 4326537, at \*3-4 (S.D.N.Y. Sept. 28, 2017)  
3 (noting most cases in this District applying a four-factor  
4 equitable test predate Nassau County and distinguishing itself  
5 from the post-Nassau County cases).

6 But I accept for purposes of this application that the  
7 equitable factors are among the type of other non-exclusive  
8 factors that the Court can consider in the wake of Nassau  
9 County: They do not weigh in favor of granting the requested  
10 stay here.

11 Defendants argue that the "driving factor" in support  
12 of granting the requested stay is their likelihood of success  
13 on appeal, asserting that "the partial judgment is almost  
14 certainly invalid . . ." Dkt. No. 506, at 1. They  
15 incorporated by reference a copy of their appellate brief to  
16 their motion, requiring that I read it. And they have asked me  
17 to give its likelihood of success substantial weight in  
18 evaluating this motion. I am disinclined to handicap what the  
19 Second Circuit is likely to do with the appeal, even though I  
20 understand defendants' request to be that I do just that. I am  
21 not going to provide an overview of my response to the briefing  
22 on it. I note as an aside that the first plank of the appeal  
23 relates to an issue that was not presented to the Court;  
24 namely, whether I should have analyzed whether or not to  
25 decline supplemental jurisdiction after we decided to try only

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1 the New York Labor Law claims. It is unclear to me that the  
2 argument has much substance, given that the FLSA claims were  
3 not dismissed from the case -- streamlining the issues  
4 presented to the jury for trial is substantially different,  
5 arguably, from dismissing the claims. Whether or not the  
6 Second Circuit will accept as a matter of fact that the claims  
7 were "withdrawn" on this record is up to them; so too is the  
8 question of whether or not "withdrawal" of claims is the same  
9 as dismissing them is also something that they will determine.  
10 I do not recall dismissing the FLSA claims before trial, so it  
11 may prove that defendants' first argument rests on a factual  
12 misrepresentation of the record.

13 With respect to the second plank of the argument on  
14 appeal, I will only say that I believe that the interpretation  
15 of the statute is a useful argument to take up on appeal --  
16 that is part of the reason why I allowed the entry of partial  
17 judgment so that the issue could be considered by the court of  
18 appeals -- their view will provide clarity regarding the law.  
19 I will observe just two things about that part of the appeal,  
20 however. First, I do not think that district courts can avoid  
21 deciding tricky issues of state law. That is part of my job, I  
22 think, even though defendants appear to believe that by  
23 deciding an issue of state law I overstepped my role. I make  
24 this observation in furtherance of my second comment, which is  
25 that the Second Circuit has a mechanism available to it that I

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1 do not -- it can certify questions to the New York State Court  
2 of Appeals. If the Circuit concludes that this is an important  
3 issue of state law, they may decide to certify the question to  
4 the Court of Appeals. If they do so, the resolution of the  
5 appeal may take more time. In any event, while I do not  
6 handicap what the Second Circuit will do with respect to the  
7 appeal, I do not believe that the arguments presented by  
8 plaintiffs regarding the strength of their argument on appeal  
9 justifies the imposition of a stay in the absence of a bond or  
10 alternative security. Again, plaintiffs assert that certain  
11 defendants have dissipated and hidden assets. Some security is  
12 important in these circumstances to stay enforcement  
13 proceedings. Defendants have offered none. In any case, the  
14 enforcement proceedings that defendants seek to stay are  
15 essentially efforts by plaintiff to make sure that defendants'  
16 assets remain available in the case that plaintiffs collect on  
17 the partial judgment. Defendants do not present any persuasive  
18 argument as to why this process must be stayed.

19 Defendants also argue that they are "likely suffer  
20 irreparable harm" because, in their words, it would be  
21 difficult to get back the damages award from the Class  
22 plaintiffs if the judgment is enforced and defendants prevail  
23 on appeal. Dkt. No. 475, at 4. I recognize that is one of the  
24 concerns behind Rule 62(b). See *Nassau Cnty.*, 783 F.3d at 417.  
25 But again, the enforcement proceedings at issue are focused on

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1 ensuring that the funds remain available for plaintiff to  
2 collect -- therefore, this argument is premature, speculative,  
3 and therefore ultimately unpersuasive. I will briefly note  
4 that, at least in the preliminary injunction context,  
5 "irreparable harm" must be "certain and imminent." See, e.g.,  
6 *Stewart v. Metro. Transp. Auth.*, 566 F. Supp. 3d 197, 214  
7 (E.D.N.Y. 2019); see also *U.S. S.E.C. v. Daspin*, 557 F. App'x  
8 46, 48 (2d Cir. 2014) (denying stay of appeal for failure to  
9 show equitable factors). Even if defendants are correct on the  
10 difficulty of re-collecting the judgment award back from  
11 plaintiffs after disbursement, such injury is neither certain  
12 nor imminent for the reasons I have already described:  
13 Plaintiffs have not yet been successful in recovering any  
14 assets. I may be willing to consider this issue again when the  
15 issue is more imminent.

16 As for any other factors before me in making this  
17 ruling, I again stress that defendants offer no alternative to  
18 a Rule 62(b) bond or other assurance that plaintiffs can  
19 recover on the judgment if they, in fact, prevail on appeal.  
20 See, e.g., *EMA Fin. LLC v. Joey N.Y. Inc.*, 2022 WL 2399754, at  
21 \*3 ("The fact that [defendants] do not offer any assurances  
22 that they could secure the judgment if plaintiff prevails on  
23 appeal counsels against waiving the bond requirement.").  
24 Reconsideration denied, 2022 WL 4611949 (Sept. 30, 2022).  
25 Defendants argue that Plaintiffs "already have the additional

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1 financial protection provided by the temporary restraining  
2 order that the Court has already issued against Kalayjian."  
3 Dkt. No. 475, at 3. A temporary restraining order is just  
4 that -- temporary. Defendants assume that the TRO will remain  
5 in place during the duration of their requested stay. But that  
6 is not necessarily a foregone conclusion, especially given that  
7 defendants do not purport to speak on behalf of Ms. Kalayjian,  
8 who is actively contesting the motion for attachment against  
9 her. Nor is the TRO itself, even if it remains in place, a  
10 sufficient alternative to a bond, as would be required under  
11 Rule 62(b).

12 As for Mr. Ghatanfard's health, again I express my  
13 serious sympathies. But the factor does not weigh heavily  
14 enough in favor of a stay. Indeed, his precarious health  
15 arguably weighs in favor of efficiently resolving all issues as  
16 to his and other defendants' ability to satisfy the judgment.  
17 Defendants arguably recognize as much by representing that,  
18 "because of Ghatanfard's medical condition, movants intend to  
19 seek an expedited appeal in the Second Circuit." Dkt. No. 475,  
20 at 4. While I am very sympathetic to his health concerns, it  
21 may be the case that they make it all the more important for  
22 plaintiffs to be able to collect information from him now about  
23 the location of his assets in order to secure any judgment.  
24 Mr. Comer's health also does not warrant a stay. I'm happy  
25 that Mr. Comer has joined us today. I hope that this is a

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1 signal that he is better. Again, I will continue to take into  
2 account Mr. Comer's and Mr. Ghatanfard's health as we schedule  
3 proceedings directed at him specifically.

4 Accordingly, I find that defendants have not shown  
5 that waiving the bond requirement of Rule 62 is warranted here.  
6 And, because defendants do not offer a bond, defendants' motion  
7 for an emergency stay is denied.

#### 8 IV. CONCLUSION

9 For these reasons, defendants' motion for an emergency stay of  
10 the enforcement proceedings is denied.

11 Now before we conclude, let me just come back as a  
12 coda to something that I said at the outset, which is that I am  
13 acting on the request to stay all enforcement proceedings in  
14 this case pursuant to Rule 62 that would extend to the  
15 enforcement action as to the assets of Ms. Kalayjian which I  
16 should note that we are having a conversation about next week.

17 But I again am happy to and I will take into account  
18 the health concerns regarding Mr. Ghatanfard as we discuss how  
19 to structure and proceed with the contempt proceedings against  
20 him. So I am ruling on the request to stay all enforcement  
21 proceedings. I am not saying that I will do anything but think  
22 thoughtfully about the impact of Mr. Ghatanfard's health  
23 conditions on his ability to participate in court proceedings  
24 as any enforcement actions move forward before me.

25 So I want to turn to talking about the other issue,

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1 which is the trial question. Again, this is one where  
2 Mr. Ghatanfard's health condition is a real concern. Counsel  
3 for plaintiff, I understand that Mr. Zivkovic thinks that it is  
4 important to pursue a trial against Mr. Ghatanfard on these  
5 remaining claims notwithstanding the amount of work involved  
6 and the issues that you already confronted in attaining money  
7 from him for the claims as to which you have a present  
8 judgment. I really do continue to encourage you and  
9 Mr. Zivkovic to think over this question that is whether or not  
10 this is something that you want to spend your time on. But at  
11 this point I understand that that is indeed your goal, and that  
12 I am going to need to schedule another trial of the case. I  
13 have looked at my calendar for potential trial dates. I will  
14 try to set a date for the trial assuming, counsel, that you,  
15 again, want to try this and bring Mr. Zivkovic back to the  
16 states to do it.

17 So let's talk about how we are going to progress on  
18 that front. We've got the lawyers who need to be involved in  
19 scheduling matters on the phone. You may wish to confer  
20 amongst yourselves about potential trial dates. My inclination  
21 would be to direct the parties to submit a letter to the Court  
22 with proposed trial dates. I think most likely we will be  
23 looking at dates in the summer, the earliest may be sometime in  
24 April.

25 What I would like to do is hear from the parties about

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1 when you would like to schedule the trial, and I would like to  
2 hear from you about how you would like for me to ask you to  
3 working together to (A) discuss seriously whether or not that  
4 this is worth it; and (B) assuming that it is, set a trial date  
5 and deadlines for submissions of all of the appropriate  
6 pretrial submissions for our new trial.

7 So I am going to ask each party how you would like to  
8 proceed. Again, my inclination is to ask you to meet and  
9 confer about a topic and send me a letter. I propose the  
10 letter be sent to me by a week from today. That is a proposal.  
11 I'm happy to hear other alternative proposals, or other ideas  
12 from all of you. I just set that out as a possible  
13 alternative.

14 Let me start with counsel for plaintiff. Counsel, how  
15 would you propose to proceed? Is that an acceptable approach?  
16 If not, what alternative would you like to suggest?

17 MR. BUZZARD: Good afternoon, your Honor. Lucas  
18 Buzzard for plaintiff.

19 I think the Court's proposal makes sense. I think  
20 that will give us a chance to go back to Mr. Zivkovic and  
21 discuss his options, particularly in light of the change in  
22 circumstances to Mr. Ghatanfard's health. (Inaudible) of that  
23 issue, and I'm happy to work with defendants on coming into the  
24 States in the event that he cannot otherwise resolve it.

25 THE COURT: Good. Thank you. I appreciate your

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1 willingness to revisit these questions in light of the change  
2 in circumstances.

3 So let me hear from counsel for Midtown. Is that an  
4 acceptable approach for you or do you have any alternatives  
5 that you would like to suggest?

6 MR. SPEILBERG: Thanks, Judge. Leonard Spielberg.

7 Judge, I've just got nothing to offer. Yeah.

8 what I can say is that before we could have a trial in  
9 those remaining claims, I believe that there is a need for some  
10 motion practice in light of the *Blumberg* case that escaped our  
11 consideration prior to the trial. I think --

12 THE COURT: Let me pause you on that, counsel. I  
13 appreciate that. Please think about that. I think it is fair  
14 to say that in this case there are collective considerations.  
15 I would ask you to consider that question. My hope is that the  
16 parties will consider that question. In other words, I'm sure  
17 that plaintiff will consider whether in light of the Court of  
18 Appeals' decision in that case, they have substantial  
19 likelihood of success on the merits of the claims that will be  
20 retried. I expect that that will be part of the conversation  
21 that they will be having with their client about how they wish  
22 to proceed. I expect that that issue will be percolated  
23 between the parties as you talk about whether and if, and if so  
24 how, you want to schedule a trial date. I appreciate that.  
25 That is a reasonable comment. It is a consideration that I

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1 would expect to be taken into account as the parties are  
2 choosing how to proceed.

3 If we are in the position of having to schedule a  
4 trial, and if the application is for leave to file a motion for  
5 summary judgment or some such in order to determine whether or  
6 not plaintiff's evidence would suffice, I am happy to do that,  
7 and you can ventilate that in your letter.

8 Anything else, counsel for Midtown?

9 MR. SPEILBERG: This is Leonard Spielberg again.

10 Also, your Honor, I think that it would make sense for  
11 us to schedule or discuss a schedule that would begin upon the  
12 decision on the appeal.

13 THE COURT: Thank you. I'm happy for the parties to  
14 discuss that as one of the options. I will leave it to you to  
15 let me know what proposals the parties would like to present.  
16 And I won't comment further about what considerations may play  
17 into your strategic thinking on these issues. I appreciate  
18 that that is among the options the parties may wish to present  
19 to the Court.

20 Counsel for Meat Packing, anything you would like to  
21 say?

22 MS. BIANCO: Maria Bianco. Nothing, your Honor.

23 THE COURT: Counsel for Mr. Ghatanfard.

24 MR. COMER: Neal Comer, your Honor.

25 Judge, my concern really is Mr. Ghatanfard's

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1 condition, whether he would be able to participate in getting  
2 ready for trial much less a trial itself. I know that he had  
3 expressed a desire to be here in my office today to listen in  
4 on this conference, but he had a chemo treatment today rather  
5 intensely, and what I am told is that he was too ill to get  
6 here. So I'm nervous about the idea of fixing a trial date not  
7 knowing what his ability would be to prepare for it, much less  
8 participate in it. So with that, your Honor, I don't know what  
9 else to say.

10 THE COURT: Thank you. I appreciate that. I am sure  
11 those are all issues that the parties will talk about and that  
12 will, among other things, inform plaintiff's decision about  
13 whether these are claims that need be pursued.

14 MR. SPEILBERG: Judge, I'm sorry to interrupt.  
15 Leonard Spielberg, Judge I. Believe your suggestion defendants  
16 providing a joint letter by a week from today, I think that's a  
17 zealous thing.

18 THE COURT: I'm sorry?

19 MR. SPEILBERG: I think that a week from today is  
20 unrealistic for a joint response from defendants. I think at a  
21 minimum it should be two weeks from today.

22 THE COURT: Thank you. That's fine. The request is  
23 that the parties send me proposal regarding scheduling, but I  
24 think that two weeks as opposed to one is fine. So I look  
25 forward to seeing that from the parties no later than

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1 November 3.

2 Very good. Thank you can all very much for your time.

3 This proceeding is adjourned.

4 (Adjourned)